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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 UNIVERSAL CITY STUDIOS, INC.,
13 a corporation,

14 Plaintiff,

15 vs.

16 RKO GENERAL, INC., a corporation,
17 RINO DELAURENTIIS CORPORATION, a
18 corporation, and RICHARD COOPER,

19 Defendants.

NO. CV 75-3526-R

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
CROSS-COMPLAINT OF
RICHARD COOPER

(Incorporating and
Supplementing Findings
of Fact and Conclusions
of Law Entered on
December 21, 1976)

20 RKO GENERAL, INC., a
21 corporation,

22 Defendant and
23 Counter-Claimant,

24 vs.

25 UNIVERSAL CITY STUDIOS, INC.,
26 a corporation,

27 Plaintiff and
28 Counter-Defendant.

29
A002185

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1	RICHARD COOPER,	)
2		)
3	Defendant and	)
4	Cross-Complainant,	)
5		)
6	vs.	)
7		)
8	RKO GENERAL, INC.,	)
9	a corporation,	)
10		)
11	Defendant and	)
12	Cross-Defendant.	)

The Cross-Complaint of Defendant and Cross-Complainant
 Richard Cooper came on regularly for trial before the Court and
 without a jury on September 1, 1976, the Honorable Manuel L. Real,
 United States District Judge presiding. The Defendant and Cross-
 Complainant, Richard Cooper, appeared by Kadison, Pfaelzer, Woodard,
 Quinn & Rossi by Richard K. Simon, Esq. and Lee L. Blackman, Esq.;
 Defendant and Cross-Defendant RKO General, Inc. appeared by Lillick,
 McEose & Charles by Anthony Liebig, Esq. and Andrew W. Robertson,
 Esq.; and Plaintiff and Counter-Defendant Universal City Studios
 appeared by Rosenfeld, Meyer & Susman by Stephen Kroft, Esq. and
 by Gang, Tyre & Brown by Stanley P. Gold, Esq. Having considered
 the oral and documentary evidence, the stipulations of counsel and
 pretrial memoranda, and having heard argument of counsel, the
 Court made and entered Findings of Fact and Conclusions of Law and
 entered an Interlocutory Judgment on December 21, 1976, thereby
 determining certain issues of liability in favor of Richard Cooper
 and referring the matter to a Special Master to take and report an
 accounting of Richard Cooper's damages. The Court, having con-
 sidered the Special Master's Proposed Findings of Fact and Con-
 clusions of Law and Final Report, the transcript of proceedings

1 before the Special Master, the documentary evidence, stipulations,
2 and pleadings submitted to the Special Master, the pleadings,
3 records, and files herein and the arguments of counsel, and being
4 duly advised in the premises now makes its final Findings of Fact
5 and Conclusions of Law on the Cross-Complaint of Richard Cooper,
6 incorporating and supplementing its Findings and Conclusions as
7 entered on December 21, 1976, as follows:

8
9 FINDINGS OF FACT
10

11 1. Defendant and Cross-Complainant Richard Cooper is a
12 resident of the State of California. He is the son and heir of
13 Merian C. Cooper and, as has been stipulated by the parties, is
14 the sole legal owner of all of the rights held by Merian C. Cooper
15 during his life in and to the properties and interests more fully
16 described herein.
17

18 2. Defendant and Cross-Defendant RKO General, Inc. is
19 a corporation organized and existing under the laws of the State
20 of Delaware and qualified to do, and doing, business in the State
21 of California and is the successor in interest to all of the
22 rights of its predecessor corporation RKO Radio Pictures, Inc.
23 RKO General, Inc. and RKO Radio Pictures, Inc. are hereafter
24 referred to jointly as "RKO".
25

26 3. Merian C. Cooper, the father of the Cross-Complain-
27 ant herein, was in the years 1924 and thereafter the producer and
28 director of documentary-expeditionary motion picture photoplays.

1 4. During the years 1924 through 1931, Merian C.
2 Cooper became interested in producing a motion picture involving
3 the central character of a giant gorilla. In furtherance of that
4 goal he conducted substantial research into various species of
5 gorillas and their habits with the assistance of his secretary
6 Dagmar Matson (later Dagmar Stickle).
7

8 5. In the years 1929 and 1930, Merian C. Cooper dis-
9 cussed the making of the aforesaid motion picture with several
10 persons including Mr. Douglas Burden, then a trustee of the
11 American Museum of Natural History. Mr. Burden had recently
12 returned from an expedition to the Island of Komodo in the Dutch
13 East Indies. He and Merian C. Cooper discussed the expedition at
14 length, and in particular, discussed the fact that Burden had
15 taken his wife to that island and that almost prehistoric animals,
16 the "dragon lizards", continued to survive there. They also
17 discussed the fact that the several Komodo lizards which were
18 returned to the United States for exhibition had survived but a
19 short period of time before being "destroyed by civilization".
20

21 6. Sometime during the years 1929, 1930 and prior to
22 October, 1931, Merian C. Cooper reduced his ideas for the "gorilla"
23 motion picture to original written expressions in the form of two
24 or three rough treatments running fifteen to twenty pages in
25 length. The story was then entitled "Kong" and involved the
26 bringing of a giant gorilla back to New York City and having him
27 killed there by "civilization".
28
29

1 7. Prior to October, 1931 Merian C. Cooper conceived
2 of the name "Kong" to identify the giant gorilla he had created.
3 During this period of time, he also conceived of the idea of the
4 giant gorilla standing at the top of the Empire State Building
5 making a "last stand" against attacking airplanes while attempting
6 to protect the beautiful American girl he loved.

8 8. Prior to October, 1931 Merian C. Cooper disclosed
9 his "Kong" story to several persons including David Bruce and
10 David O. Selznick. He also discussed the possibility of making a
11 motion picture based upon that story with a representative or
12 representatives of Paramount Pictures.

14 9. In or about October, 1931 David O. Selznick was
15 appointed Head of Production for RKO in Hollywood. Before
16 Selznick's departure from New York for Hollywood David Bruce,
17 David Selznick and Merian C. Cooper discussed Cooper's ideas for a
18 "Kong" motion picture and it was decided that Merian C. Cooper
19 would go to Hollywood to talk to Mr. Selznick about it after
20 Selznick had taken over his new position.

22 10. In October of 1931 Merian C. Cooper traveled to
23 Hollywood and formally proposed the making of his "Kong" motion
24 picture to David Selznick. While this proposed motion picture was
25 being considered by RKO, and before Merian C. Cooper had been
26 placed on salary or employed by RKO, Merian C. Cooper had several
27 artists prepare a number of sketches under his direction illustra-
28 ting scenes from his story. Among the illustrations was one

1 depicting airplanes shooting at the giant gorilla who was standing
2 on the Empire State Building holding a beautiful girl in his hand.

3
4 11. Prior to being employed by RKO, Merian C. Cooper
5 showed his treatments of the "Kong" story and the aforesaid illus-
6 trations to David O. Selznick, who approved the making of a test
7 sequence based on a portion of that story.

8
9 12. On or about November 10, 1931 Merian C. Cooper met
10 with Fay Wray. In that meeting he discussed the "Kong" motion
11 picture project and showed her several sketches of scenes from the
12 proposed motion picture including one of "Kong" on the Empire
13 State Building. He told her that the story would be about an
14 expedition going to some remote place and capturing an extraordi-
15 nary creature who would be returned to New York. He also told her
16 that he needed a blonde to play against the dark gorilla and that
17 the gorilla would be shown through miniatures rather than by using
18 a live gorilla.

19
20 13. Subsequent to November 10, 1931 and prior to January
21 1932, Merian C. Cooper began direction of an initial test sequence
22 for the "Kong" motion picture which, after production, was substan-
23 tially incorporated into the final motion picture.

24
25 14. On January 9, 1932 Merian C. Cooper executed an
26 employment contract with RKO.

27
28

1 15. Merian C. Cooper was not an employee of RKO prior
2 to January 9, 1932, although he acted as a consultant to David O.
3 Selznick.

4
5 16. Prior to January 9, 1932 RKO had no power, author-
6 ity or right to direct or control the work done by Merian C.
7 Cooper with respect to the story of "King Kong" or the filming
8 thereof.

9
10 17. The name, character, and story "King Kong" were not
11 created for RKO by Merian C. Cooper as works for hire.

12
13 18. No rights of any kind to use or license the use of
14 the character, name, and/or story "King Kong" were conveyed to RKO
15 by the January 9, 1932 employment agreement.

16
17 19. On January 23, 1932 Merian C. Cooper executed an
18 "Assignment" with reference to the "Kong" story. As of that date,
19 the essential elements of the story, as ultimately embodied in the
20 RKO motion picture photoplay "King Kong", had been created by
21 Merian C. Cooper, and actual production of that motion picture
22 photoplay had begun.

23
24 20. The January 23, 1932 "Assignment" granted RKO only
25 the right to produce one motion picture photoplay using the char-
26 acter, name, and story "King Kong", and the parties thereto so
27 understood.

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1 21. All rights not specifically granted to RKO in the
2 January 23, 1932 Assignment were reserved by the assignors.

3
4 22. RKO was not granted the right to use or license the
5 use of the character, name, and/or story "King Kong" in connection
6 with sequels to the RKO motion picture "King Kong" by the January
7 23, 1932 Assignment.

8
9 23. RKO was not granted the right to use or license the
10 use of the character, name, and/or story "King Kong" in connection
11 with remakes of the RKO motion picture "King Kong" by the January
12 23, 1932 Assignment.

13
14 24. RKO was not granted the right to use or license the
15 use of the character, name, and/or story "King Kong" in connection
16 with the production, distribution, sale, or promotion of toys,
17 games, books, pictures, models, or any other form of merchandising
18 by the January 23, 1932 Assignment.

19
20 25. Among the "good and valuable consideration" tendered
21 by RKO in the January 23, 1932 Assignment was the implied promise
22 that RKO would not exploit any of the rights which were not speci-
23 fically conveyed to RKO therein.

24
25 26. The motion picture photoplay "King Kong" was com-
26 pleted in 1933 and first published on February 24, 1933.

1 27. On June 15, 1933 Merian C. Cooper executed an
2 Assignment with respect to a sequel to "King Kong", originally
3 titled "Jamboree" and later titled "Son of Kong". By this Assign-
4 ment RKO was granted the right to produce a single motion picture
5 photoplay sequel to the motion picture "King Kong", and all other
6 rights were reserved by Merian C. Cooper.

7
8 28. The Assignments of January 23, 1932 and June 15,
9 1933 and the Employment Agreement of January 9, 1932 were prepared
10 by or for RKO. There is no evidence that Merian C. Cooper was
11 represented by and did consult with counsel prior to the execution
12 of any of these documents.

13
14 29. On October 28, 1935 Mr. Daniel O'Shea, the attorney
15 in charge of the Legal Department of the RKO Studio in Los Angeles,
16 was asked by RKO to analyze the Assignment of January 23, 1932 and
17 in that analysis acknowledged with respect to sequel rights that
18 the language of that Assignment was neither clear nor definitive.

19
20 30. On November 11, 1952 an attorney employed by RKO
21 was asked by RKO to analyze the Assignment of January 23, 1932 and
22 in that analysis acknowledged that Merian C. Cooper reserved all
23 rights not specifically granted, including the rights to novelize,
24 dramatize, and publish the story.

25
26 31. Since 1932 RKO has granted licenses or permissions
27 for, or has otherwise allowed or approved, the making of motion
28 pictures using the name, character, and/or story of "King Kong",

1 including "King Kong vs. Godzilla" (1963); "King Kong Escapes"
2 (1968); "King Kong" (1966 - an animated cartoon T.V. film series)
3 and "King Kong" (licensed in 1975 - released in 1976).

4
5 32. Since 1932, and to the present date, RKO has granted
6 licenses or permissions for, or has otherwise allowed or approved,
7 the use of the name, character, and/or story "King Kong" in connec-
8 tion with the production, distribution, sale, or promotion of
9 toys, games, books, pictures, models, and other forms of merchan-
10 dising.

11
12 33. Merian C. Cooper did not learn of RKO's merchandis-
13 ing of the character, name, and story "King Kong" until 1964 when
14 the motion picture "King Kong vs. Godzilla" was released and a toy
15 model of the "King Kong" character was distributed by Aurora
16 Plastics, both licensees of RKO.

17
18 34. Immediately after receiving notice that RKO was
19 engaging in such licensing activities Merian C. Cooper informed
20 RKO that these activities were violative of his rights in the
21 character, name, and story "King Kong" which he informed RKO
22 encompassed all of the licensing being undertaken by RKO with
23 regard to the merchandising of the character, name, and story
24 "King Kong" and the licensing of any new motion picture utilizing
25 the character, name, or story of "King Kong".

26
27 35. Merian C. Cooper's assertion of his rights continued
28 until his death on April 21, 1973 and RKO had notice of Merian C.

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1 Cooper's assertion that he was the original creator and exclusive
2 owner of the name, character, and story "King Kong" and that the
3 only rights ever granted by him to RKO were the rights to exhibit
4 and exploit the original "King Kong" motion picture and the motion
5 picture sequel "Son of Kong".
6

7 36. Neither Merian C. Cooper nor Richard Cooper con-
8 sented to, approved, or permitted RKO's licensing of the use of
9 the name, character, or story "King Kong" in connection with any
10 motion picture subsequent to the 1933 RKO motion picture, other
11 than "Son of Kong", or in connection with the production, distri-
12 bution, sale, or promotion of any toys, games, books, pictures,
13 models, or any other form of merchandising.
14

15 37. Neither Merian C. Cooper nor Richard Cooper aban-
16 doned their claimed rights in and to the name, character, and
17 story "King Kong".
18

19 38. Neither Merian C. Cooper nor Richard Cooper waived
20 their claimed rights in and to the name, character, and story
21 "King Kong".
22

23 39. Neither Merian C. Cooper nor Richard Cooper acted
24 toward or made statements to RKO which could reasonably have led
25 RKO to believe that either had relinquished, abandoned, or waived
26 their claimed rights in and to the name, character, and story
27 "King Kong".
28

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1 40. Neither Merian C. Cooper nor Richard Cooper acted
2 toward or made statements to RKO which could reasonably have led
3 RKO to believe that either agreed to, approved, consented to, or
4 permitted RKO to license the name, character, or story "King Kong"
5 in connection with any motion picture subsequent to the 1933 RKO
6 motion picture, other than "Son of Kong", or in connection with
7 the production, distribution, sale, or promotion of any toys,
8 games, books, pictures, models, or any other form of merchandising.
9

10 41. From May 10, 1972 (the first date after which
11 Richard Cooper may recover damages under the applicable statute of
12 limitations) to December 31, 1976 RKO received revenues of \$39,712
13 from merchandising unrelated to that undertaken pursuant to the
14 1975 license granted to the Dino DeLaurentiis Corporation (referred
15 to in Finding of Fact number 31). Fifteen percent (15%) of said
16 \$39,712 (or \$5,956.80) is deductible as commissions and other
17 expenses related to such revenue, leaving a profit in the amount
18 of \$33,755.20.
19

20 42. RKO has received payments from or on behalf of Dino
21 DeLaurentiis Corporation ("DDLIC") in connection with the
22 DeLaurentiis remake of "King Kong" and related merchandising
23 (hereinafter sometimes the "DDLIC remake"), between May 10, 1972
24 and October 31, 1977, in the amount of \$1,685,800.32.
25

26 43. In connection with its prosecution of RKO General
27 Inc. and Dino DeLaurentiis Corporation v. Dexter Films, Inc. et
28 al. High Court of Justice, Chancery Division, London, England.
29

1 filed November 1, 1976, RKO paid the following legal fees and
2 expenses as of October 31, 1977:

3
4 • (a) Fees and expenses paid to Regan, Goldfarb,
5 Heller, Wetzler & Quinn -- \$12,602.09.

6
7 (b) Fees and expenses paid to Wilde, Sapte &
8 Co. -- \$15,274.59.

9
10 (c) Fees and expenses paid to Coudert Brothers
11 -- \$4,235.65.

12
13 (d) Fees and expenses paid to William Rith (Liter-
14 ary expert) -- \$392.50.

15
16 (e) Commission for English Injunction Bond --
17 \$1,000.60.

18
19 Said fees and expenses were reasonable under the circumstances,
20 and are properly deductible from revenues to determine RKO's
21 profits from the DDLC remake.

22
23 44. In connection with its prosecution of RKO General
24 Inc. v. Key International Film Distributors, Inc., United States
25 District Court, District of Colorado, No. CV-A-366, filed April 5,
26 1976, RKO paid the following fees and expenses as of October 31,
27 1977:

1 (a) Fees and expenses paid to Regan, Goldfarb,
2 Heller, Wetzler & Quinn -- \$9,144.50.

3
4 (b) Fees and expenses paid to Holland & Hart --
5 \$2,543.52.

6
7 said fees and expenses were reasonable under the circumstances,
8 and are properly deductible from revenues to determine RKO's
9 profits from the DDLC remake.

10
11 45. In connection with its prosecution of RKO General,
12 Inc. v. Paul Leder, United States District Court, Central District
13 of California, No. CV 76-1223-R, filed April 14, 1976, RKO paid
14 the following fees and expenses as of October 31, 1977:

15
16 (a) Fees and expenses paid to Regan, Goldfarb,
17 Heller, Wetzler & Quinn -- \$1,072.50.

18
19 (b) Fees and expenses paid to Lillick, McEuse &
20 Charles -- \$9,719.09.

21
22 said fees and expenses were reasonable under the circumstances,
23 and are properly deductible from revenues to determine RKO's
24 profits from the DDLC remake.

25
26 46. In connection with its opposition to the Applica-
27 tion for Trademark Registration of H. H. Brown Shoe Co., United
28 States Patent & Trademark Office, filed February 9, 1976, RKO paid

1 the following legal fees and expenses as October 31, 1977:
2

3 (a) Fees and expenses paid to Coudert Brothers
4 -- \$8,324.99.
5

6 said fees and expenses were reasonable under the circumstances,
7 and are properly deductible from revenues to determine RKO's
8 profits from the DDLC remake.
9

10 47. RKO paid the following fees and expenses to Rogers-
11 Rowland, Toronto, Canada in connection with "King Kong" copyright
12 registration in Canada and injunctive relief against a cartoon
13 book published in Canada -- \$223.24. Said fees and expenses were
14 reasonable under the circumstances and are properly deductible
15 from revenues to determine RKO's profits from the DDLC remake.
16

17 48. (a) RKO paid legal fees and expenses to Coudert
18 Brothers "re general advices" in connection with the DDLC remake
19 in the amount of \$1,628.47 as of October 31, 1977.
20

21 (b) RKO paid legal fees and expenses to Youngman,
22 Hungate & Leopold "regarding the DDLC contract" in the amount of
23 \$1,825.00 as of October 31, 1977.
24

25 Said fees and expenses were reasonable under the circumstances and
26 are properly deductible from revenues to determine RKO's profits
27 from the DDLC remake.
28

1 49. As of October 31, 1977, RKO has paid fees to Ernst
2 & Ernst for an accounting of the financial statements rendered by
3 DDLC in connection with the DDLC remake of "King Kong" in the
4 amount of \$2,950.00. Said expenses were reasonable under the
5 circumstances and are properly deductible from revenues to deter-
6 mine RKO's profits from the DDLC remake.

7
8 50. RKO incurred direct overhead expenses in connection
9 with "King Kong" matters as of October 31, 1977 as follows:

10
11 (a) Direct expenses of Arnold Kaufman - \$12,742.52.

12
13 (b) Additional telephone room and mail room
14 expenses incurred by reason of the remake of "King Kong" in the
15 amount of \$1,087.50.

16
17 Said expenses were reasonable under the circumstances and are
18 properly deductible from revenues to determine RKO's profits from
19 the DDLC remake.

20
21 51. RKO has failed to present evidence or to carry its
22 burden of proof with respect to the relatedness, reasonableness
23 and necessity of the legal fees and expenses in the sum of
24 \$66,417.75 paid to Regan, Goldfarb, Heller, Wetzler & Quinn for
25 what RKO characterizes as "preparation and administration of con-
26 tracts involving the 'King Kong' remake, including merchandising,
27 protection of the title in the Motion Picture Association of
28 America, registration procedures, policing of unauthorized uses of

1 King Kong title, name and character, trademark problems and related
2 matters". RKO has also failed to demonstrate what portion or
3 portions of the above expenses were incurred in connection with
4 the non-DDLC merchandising income. Said fees and expenses are,
5 therefore, not deductible from revenues to determine RKO's profits
6 from the DDLC remake.

7
8 52. RKO paid Sidney Korshak, Esq., in connection with
9 the Universal-RKO litigations referred to herein, the sum of
10 \$50,000.00. Said fees and expenses were not reasonable under the
11 circumstances and are not properly deductible from revenues to
12 determine RKO's profits from the DDLC remake.

13
14 53. RKO reimbursed Regan, Goldfarb, Heller, Wetzler &
15 Quinn for its cash disbursements in connection with the various
16 referenced litigations, in the amount of \$11,295.30. RKO has
17 failed to present evidence or to carry its burden of proof with
18 respect to the relatedness, reasonableness and necessity of the
19 cash disbursements reimbursed to Regan, Goldfarb, Heller, Wetzler
20 & Quinn in connection with the various litigations. RKO has also
21 failed to demonstrate what portion, if any, of those cash dis-
22 bursements were paid in connection with the Universal/RKO litiga-
23 tions. Said cash disbursements are, therefore, not deductible
24 from revenues to determine RKO's profits from the DDLC remake.

25
26 54. With the exception of the expenses identified in Finding
27 of Fact number 50(b), RKO did not incur any expenses in the nature
28 of overhead, including without limitation rent, maintenance or

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1 utilities, by reason of the DDLC remake of "King Kong" which it
2 would not have incurred in the ordinary course of its business had
3 that remake not been produced or the DDLC contract not been entered
4 into. RKO has failed to produce evidence or to carry its burden
5 of proof with respect to such portions of its claimed "overhead"
6 expenses or other claimed deductions.

7
8 55. RKO's withdrawal from distribution of the original
9 motion picture photoplay "King Kong" was entirely voluntary and
10 not compelled by its agreement with DDLC and not required by the
11 ordinary course of business. Any losses allegedly sustained by
12 RKO as a result of this withdrawal are not deductible from reve-
13 nues to determine RKO's profits from the DDLC remake.

14
15 56. The actions entitled Universal City Studios, Inc.
16 v. RKO General, Inc., Dino DeLaurentiis Corporation, Dino
17 DeLaurentiis (Los Angeles Superior Court Case No. 125 242) and
18 Universal City Studios, Inc. v. RKO General, Inc., Dino
19 DeLaurentiis Corporation, Richard Cooper, (United States District
20 Court, Central District of California Case No. CV-75-3526-R) were
21 each commenced as a sole and direct result of the contract entered
22 into between Universal and RKO (per Findings of Fact and Conclu-
23 sions of Law on Count I of RKO's Counter-Claim herein) and RKO's
24 rejection of same. Expenses related to the above-entitled actions
25 were not reasonably or necessarily incurred and arose out of a
26 transaction wholly separate from that creating RKO's remake income
27 and are not deductible from revenues to determine RKO's profits
28 from the DDLC remake.

CONCLUSIONS OF LAW

1
2
3 1. The Court has jurisdiction of this Cross-Complaint
4 pursuant to Title 28 U.S.C. sections 1332, 1338, and 2201 and the
5 doctrine of pendant jurisdiction.
6

7 2. The name, character, and story "King Kong" were not
8 created for RKO by Merian C. Cooper as works for hire.
9

10 3. No rights of any kind to use or license the use of
11 the character, name, and/or story "King Kong" were conveyed to RKO
12 by the January 9, 1932 employment agreement.
13

14 4. The January 23, 1932 Assignment granted RKO the
15 right to produce one motion picture photoplay using the character,
16 name, and story "King Kong".
17

18 5. All rights not specifically granted to RKO in the
19 January 23, 1932 Assignment were reserved by the assignors.
20

21 6. RKO was not granted the right to use or license the
22 use of the character, name, and/or story "King Kong" in connection
23 with sequels to the RKO motion picture "King Kong" by the January
24 23, 1932 Assignment.
25

26 7. RKO was not granted the right to use or license the
27 use of the character, name, and/or story in connection with remakes
28 of the RKO motion picture "King Kong" by the January 23, 1932
29

1 Assignment.

2
3 8. RKO was not granted the right to use or license the
4 use of the character, name, and/or story "King Kong" in connection
5 with the production, distribution, sale, or promotion of toys,
6 games, books, pictures, models, or any other form of merchandising
7 by the January 23, 1932 Assignment.

8
9 9. Prior to his death, and as between RKO and Merian
10 C. Cooper, Merian C. Cooper was the sole owner of all rights in
11 and to the use of the character, name, and story "King Kong" with
12 the exception of the right to produce a single motion picture
13 entitled "King Kong", which right was conveyed to RKO, and the
14 right to produce a sequel to said motion picture which was entitled
15 "Son of Kong", which right was also conveyed to RKO.

16
17 10. After the death of Merian C. Cooper, and as between
18 RKO and Richard Cooper, Richard Cooper was the sole owner of all
19 rights in and to the use of the character, name, and story "King
20 Kong".

21
22 11. The Agreement of January 23, 1932 contained an
23 implied promise that RKO would not exploit any of the rights not
24 specifically conveyed to RKO.

25
26 12. The licensings by RKO of the use of the character,
27 name, and story "King Kong" in sequels to the original motion
28 picture, other than "Son of Kong", constitute breaches of the

1 express and implied terms of the Assignment of January 23, 1932.
2

3 13. The licensing by RKO of the character, name, and
4 story "King Kong" for use in a remake of the original motion
5 picture constitutes a breach of the express and implied terms of
6 the Assignment of January 23, 1932.
7

8 14. The licensings by RKO of the use of the character,
9 name, and/or story "King Kong" in connection with the production,
10 distribution, sale, and promotion of toys, games, books, pictures,
11 models, and every other form of merchandising constitute breaches
12 of the express and implied terms of the Assignment of January 23,
13 1932.
14

15 15. The profits made and licenses obtained by RKO by
16 reason of the breaches referred to in Conclusions of Law numbers
17 12, 13, and 14 were wrongfully obtained and have been wrongfully
18 withheld from Merian C. Cooper and Richard C. Cooper.
19

20 16. Richard Cooper is not estopped to assert his claims
21 for declaratory relief, for an accounting, and for damages.
22

23 17. The claims of Richard Cooper are not barred by the
24 doctrine of laches.
25

26 18. By reason of the wrongful conduct of RKO in obtain-
27 ing and retaining the profits and licenses referred to in Conclu-
28 sion of Law number 15, RKO holds the aforesaid profits and licenses
29

1 as constructive trustee for the sole benefit of Richard Cooper.

2

3 19. Richard Cooper is entitled to an accounting for and
4 payment of all profits earned by RKO from its licensings of the
5 character, name, and/or story "King Kong" for use in sequels
6 (excluding "Son of Kong") and remakes of the original motion
7 picture and for the use in connection with the production, dis-
8 tribution, sale, and promotion of toys, games, books, pictures,
9 models, and/or any other form of merchandising.

10

11 20. Richard Cooper is entitled to a declaration that
12 RKO was not granted, and did not and does not have, any rights to
13 the use of the story, character, or name of "King Kong" other than
14 in connection with the production and release of the motion picture
15 "King Kong" and the motion picture "Son of Kong"; that RKO was not
16 granted, and did not and does not have the right to license the
17 story, character, or name "King Kong" for merchandising or any
18 other purposes; that as between Richard Cooper and RKO, Richard
19 Cooper is the sole owner of all such rights in and to the story,
20 character, and name "King Kong"; and that RKO holds all monies and
21 licenses heretofore or hereafter received or executed as a result
22 of the exercise of licensing of rights to the use of the story,
23 character, or name "King Kong" as trustee for and on behalf of
24 Richard Cooper.

25

26 21. Richard Cooper's damages for the period between May
27 10, 1972 (the first date after which Richard Cooper may recover
28 damages under the applicable statute of limitations) and December

1 31, 1976, on account of RKO's non-DDLC merchandising, are \$33,755.20,
2 plus interest at the legal rate from that date.
3

4 22. Richard Cooper's damages, for all periods after
5 December 31, 1976, on account of RKO's non-DDLC merchandising,
6 shall be eighty-five percent (85%) of the gross non-DDLC mer-
7 chandising income received by RKO, plus interest at the legal rate
8 from the date of each subsequent receipt.
9

10 23. Richard Cooper's damages for the period between May
11 10, 1972 and October 31, 1977, on account of the DDLC remake of
12 "King Kong" and related merchandising, are \$1,601,033.56, plus
13 interest at the legal rate from October 31, 1977.
14

15 24. Richard Cooper's damages, for all periods after
16 October 31, 1977, on account of the DDLC remake and related mer-
17 chandising, shall be RKO's gross income therefrom:
18

19 (a) Less expenses actually incurred after October
20 31, 1977 in connection with those matters identified in Findings
21 of Fact numbers 43, 44, 45, 46, 47, 48, 49, and 50;
22

23 (b) Less fees and expenses actually paid after
24 October 31, 1977 to such accounting firm or firms as RKO may
25 employ for the purpose of auditing DDLC's statements;
26

27 (c) Plus interest at the legal rate on the net sum
28 payable, to be computed separately for each period during which
29

1 RKO receives payments from DDLC.

2

3 25. These Findings of Fact and Conclusions of Law
4 declare the rights as between Richard Cooper and RKO and do not
5 affect any other entity or person.

6

7 To the extent that any of the Findings of Fact set forth
8 above are deemed to be Conclusions of Law, and to the extent that
9 any of the foregoing Conclusions of Law are deemed to be Findings
10 of Fact, the same shall be deemed to be Conclusions of Law or
11 Findings of Fact as the case may be.

12

13 Dated: March 19, 1979

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15

UNITED STATES DISTRICT JUDGE

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31 AUG 1982
I hereby attest and certify on
that the foregoing document is a full, true and correct
copy of the original on file in my office, and in my
legal custody.
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



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